

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)	
)	
EASTERN LIVESTOCK CO., LLC,)	Case No. 10-93904-BHL-11
)	
Debtor.)	
)	
JAMES A. KNAUER, CHAPTER 11)	
TRUSTEE OF EASTERN LIVESTOCK CO.,)	
LLC)	
)	
Plaintiff,)	Adv. Proc. No. 14-59019
)	
C. B. GILBERT a/k/a CLARENCE GILBERT,)	
d/b/a 3 G CATTLE CO., and 3 G CATTLE)	
CO.,)	
)	
Defendants)	

ANSWER AND COUNTER-CLAIM

ANSWER

Comes C. B. Gilbert, a/k/a Clarence Gilbert, d/b/a 3 G Cattle Co., hereinafter referred to as "Gilbert", by counsel, and for his Answer states:

Defense I in regard to Jurisdiction and Parties

1. Gilbert lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in numerical paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Plaintiff's Complaint and therefore neither denies or admits those allegations, the Court record will speak for itself;
2. Gilbert admits the allegations contained in numerical paragraphs 10 and 11 of the Plaintiff's Complaint;
3. Gilbert denies so much of the allegations contained in numerical paragraph 12 of the

Plaintiff's Complaint as alleged Gilbert was a supplier or vendor of the Debtor but admits Gilbert had a business relationship of hauling cattle for the Debtor;

4. Gilbert admits in regard to numerical paragraph 13, that from April 25, 2008 through April 1, 2010, Gilbert received loans and/or advances from the Debtor, as would appear to be evidenced by copies of checks attached as Exhibit A to the Complaint, but is uncertain that the amounts were at least \$26,800.00 and therefore denies that allegation;
5. Gilbert denies the allegations contained in numerical paragraph 14 of the Plaintiff's Complaint that as of June 30, 2014, Gilbert owed ELC \$19,700.00.

Defense II in regard to Count I

Gilbert restates and reiterates his Answer previously set forth herein and states:

1. Gilbert admits certain loans and/or advances were made to the debtor with the understanding that they would be repaid;
2. Gilbert denies that Gilbert has failed to repay the loans and/or advances;
3. Gilbert denies numerical paragraphs 19, 20 and 21.

Defense III in regard to Count II

Gilbert restates and reiterates his Answer previously set forth herein and states:

1. Gilbert denies he has been unjustly enriched;
2. Gilbert denies he is indebted to the Debtor for \$19,700.00 or more, plus interest.

Defense IV

Gilbert restates and reiterates his Answer previously set forth herein and states:

1. Gilbert denies any and all other allegations not otherwise addressed.

Affirmative Defenses

Gilbert pleads as Affirmative Defenses: laches, estoppel, statute of limitations, lack of notice or demand by the Debtor that there were outstanding amounts owed, payment and/or set off for money Gilbert is owed by the Debtor, which may constitute a priority claim.

WHEREFORE, Gilbert respectfully requests:

1. That the Plaintiff's Complaint be dismissed at Plaintiff's cost, or in the alternative,
2. For a trial by jury on all issues so triable by a jury in this Court, otherwise, for trial by the Court on all issues so triable;
3. For his costs herein expended, if any;
4. For reasonable attorney's fees, which may be allowed by law;
5. To all other relief to which he may be entitled including leave to amend this Answer as the evidence may warrant.

COUNTER-CLAIM


Comes C. B. Gilbert, a/k/a Clarence Gilbert, d/b/a 3 G Cattle Co. herein referred to as "Gilbert" and herein asserts a claim against the Plaintiff, Eastern Livestock Co., LLC, hereinafter referred to as "ELC" as follows:

1. That Gilbert hauled livestock for the Debtor for which he was to receive compensation for those services.
2. That Gilbert did not receive compensation for all the services he rendered, particularly in regard to the amount of \$8,147.97, as evidenced by checks he received that were returned copies of which are set forth in a Proof of Claim dated November 18, 2013, a copy of which is filed as Exhibit A and incorporated by reference, consisting of 15 pages, for which Gilbert herein asserts a claim, in addition to any other amounts that it is determined through this litigation Gilbert may be entitled to for the services he rendered but for which he was not paid, which may constitute a priority claim.

WHEREFORE, Gilbert demands:

1. Judgment against the Plaintiff for any amounts that is determined that Gilbert is owed;
2. For a trial by jury on all issues so triable by a jury in this Court, otherwise, for trial by the Court on all issues so triable;
3. For his costs herein expended, if any;

4. For reasonable attorney's fees, which may be allowed by law;
5. To all other relief to which he may be entitled including leave to amend this Counter-Claim as the evidence may warrant.



JOHN D. DALE, JR.
Attorney for Clarence Gilbert
P. O. Box 494
Taylorsville, KY 40071
(502) 477-2296

CERTIFICATION

I hereby certify that a true copy of the foregoing Answer and Counter-Claim of Clarence Gilbert was mailed to **Amanda D. Stafford, James Lauck, and Jay P. Kennedy**, Attorneys of Kroger, Gardis & Regas, LLP, Attorneys for James A. Knauer, Trustee, 111 Monument Circle, Suite 900, Indianapolis, IN 46204-5125 this the 13th day of August, 2014.



JOHN D. DALE, JR.

Exhibit A

OMB CONTROL NO 0580-0015

U.S. Department of Agriculture Grain Inspection, Packers and Stockyards Administration Packers and Stockyards Program	Proof of Claim Under: 1. Surety Bond, (Clause 2, 3, or 4) 2. Trust Fund Agreement, (Clause 2, 3, or 4) 3. Trust Agreement, (Clause 2, 3, or 4) Issued Under Provisions of The Packers and Stockyards Act, 1921, as Amended and Supplemented
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State of (1) KENTUCKYCounty (2) SPENCERAs the undersigned, I, (3) CLARENCE B. GILBERT
4374 BLOOMFIELD RD (full name of claimant)
 Of (4) TAYLORSVILLE KY 40071 (5) 502-477-8732
 (complete mailing address) (phone: home, cell)

(other contact information: fax number, email address)

being duly sworn, depose and state:

 I make this claim to (6) Capitol Indemnity Corporation
 (name of trustee or surety)

Select One:

<input checked="" type="checkbox"/>	under the bond issued by the (7a) <u>Capitol Indemnity Corporation</u> (name of surety company)
<input type="checkbox"/>	under the Trust Fund Agreement with security held by (7b) _____ (depository, if one named)
<input type="checkbox"/>	under the Trust Agreement with letter of credit held by (7c) _____ (name of trustee)

 on behalf of (8) Eastern Livestock Co., LLC
 (full name and address of principle named in bond or trust agreement)
135 West Market St., New Albany, IN 47150

in the amount of (9) _____, due and owing for livestock purchased by

 (10) Eastern Livestock Co., LLC 135 West Market St.
 (full name and address of buyer) Clause 2, 3, or 4 New Albany, IN 47150

for his own account or as a market agency buying livestock on a commission basis. This

OMB CONTROL NO. 0580-0015

claim is based on the following described livestock which was purchased by

(11) Eastern Livestock Co., LLC
(name of buyer) Clause 2, 3, or 4

(12) SEE ATTACHED CLAIM SHEET OF HAULER

Date of Sale	Number of Head	Description of Livestock	Amount
			\$

Attached and made a part of this claim are copies of the account of purchase and other documents covering the livestock transaction, such as copies of checks issued and unpaid for the livestock purchased by:

(13) Eastern Livestock Co., LLC
(name of buyer) Clause 2, 3, or 4

and other documents indicating the sale of the livestock in question to such purchaser

for which payment has not been made. *(If full and complete documents of the transaction are not available or if these papers have become lost or destroyed, the claimant should insert a statement below of the facts:)*

(14) _____

OMB CONTROL NO. 0580-0015

None of the claimed amounts has been paid, and there are no setoffs or counterclaims to the same.

I hereby authorize the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program to release this proof of claim form and all of the attached supporting documents to the trustee or other interested parties to facilitate the processing of my claim.

(15) Clarence B. Gilbert
(signature and title of claimant)

(16) Subscribed and sworn to before me this 18 day of Nov, 2010.

(17) Shelia Hauer

(18) Notary Public for the State of Kentucky

(19) Residing at Bullitt Co. 1340 Hwy 44 East Mt Washington Ky 40047

My commission expires

(20) 2-22-2012 (seal)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 0580-0015. The time required to complete is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

**Instructions to Complete
Proof of Claim under Surety Bond
Clause Two, Three and Four
Form P&SP-2120**

When you, as a livestock seller, have not received payment for livestock sold use this form to submit a claim against the livestock buyer's bond.

Mail two copies of the completed notarized form with accompanying documentation, to the regional office of the Packers and Stockyards Program as listed below. The states covered by each regional office are listed below their address. A copy should be retained for the complainant's files.

Regional Offices of the Packers and Stockyards Program Grain Inspection, Packers and Stockyards Administration		
Eastern Regional Office Suite 230 75 Spring Street Atlanta, GA 30303-3308 Telephone: (404) 562-5840 FAX: (404) 562-5848 e-mail: PSPAtlantaGA.GIPSA@usda.gov	Western Regional Office One Gateway Centre 3950 Lewiston St., Suite 200 Aurora, CO 80011-1556 Telephone: (303) 375-4240 FAX: (303) 371-4609 e-mail: PSPDenverCO.GIPSA@usda.gov	Midwestern Regional Office Room 317 210 Walnut Street Des Moines, IA 50309-2110 Telephone: (515) 323-2579 FAX: (515) 323-2590 e-mail: PSPDesMoinesIA.GIPSA@usda.gov
States Covered	States Covered	States Covered
AL, AR, CT, DC, DE, FL, GA, LA, MA, MD, ME, MS, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, WV	AK, AZ, CA, CO, HI, ID, KS, MT, NM, NV, OK, OR, TX, UT, WA, WY	IA, IL, IN, KY, OH, MI, MO, MN, ND, NE, SD, WI

If you have questions regarding completion of any portion of the bond claim form, please contact the Regional Office that covers the state where you reside for assistance.

In most instances, the regional office of the Packers and Stockyards Program will complete line numbers 6, 7, 8, 10, and 11. This is not a requirement, and the claimant may complete those items of the form.

The claimant(s) must complete line numbers 1, 2, 3, 4, 5, 9, 12, 13, and 14, and must sign line 15.

A NOTARY PUBLIC must complete line numbers 16, 18, 19 and 20, and sign line 17.

Line No.	Subject	Instruction
1.	State	Enter the state where you live.
2.	County	Enter the county where you live.
3.	Full Name of Claimant	Enter your full name or your firm's name, respectively, as the person(s)/firm making claim against the Principal's bond.
4.	City	Enter the city where you live.
5.	State	Enter the state where you live.
6.	Name of Trustee (if applicable)	If a trustee has been named on the referenced bond, enter that name as listed on the bond on file with the Packers and Stockyards Program. If a trustee is not required on the bond, enter "None Named", or leave this item blank. If you do not know the name of the trustee, or whether a trustee is required for the referenced bond, contact the regional office of the Packers and Stockyards Program that covers your state.

Line No.	Subject	Instruction
7.	Name of Surety Company	Enter the name of the surety company that wrote the bond for the Principal. If you do not know the name of the surety, contact the regional office of the Packers and Stockyards Program that covers your state.
8.	Full Name and Address of Principal Named in Bond	Enter the name of the Principal, as listed on the bond form. Include the Principal's full address. If you do not know the name of the Principal, contact the regional office of the Packers and Stockyards Program that covers your state.
9.	Amount of Claim	Enter the amount you are claiming against the Principal's bond. Be reminded that you may only file your claim for the amount of livestock sold, or other lawful charges, as allowed by 9 CFR 201.33 issued under the Packers and Stockyards Act, 1921, as amended and supplemented.
10.	Full Name and Address of Buyer	Enter the full name and address of the buyer that purchased the livestock. In many cases, this will be the same information as in Item 8. However, the buyer may be a person/firm otherwise not listed on the referenced bond. The buyer may be a packer buyer purchasing livestock under the packer's bond, a clearee purchasing livestock under a clearing agency bond, or an employee of a registered firm purchasing livestock for said firm.
11.	Name of Buyer	Enter the name of the buyer that purchased the livestock. This will be the same information as Item 10.
12.	Date of Sale, Number of Head, Description of Livestock, Purchase Price	Using the invoice(s) provided by you, as the seller, or the buyer, enter each of the date(s) the livestock was purchased, the number of head purchased, what type of livestock was purchased, and the amount the livestock was purchased for.
13.	Name of Buyer	Enter the name of the buyer that purchased the livestock from you, and took possession of said livestock.
14.	Statement of Facts	Attach copies of the invoices and/or other documents covering the livestock transaction, copies of checks issued and unpaid for the livestock, and other instruments indicating the delivery of the livestock. If the documents for the transaction(s) are incomplete or unavailable, enter a statement of facts of the transaction(s) in this section.
15.	Signature and Title of Claimant	Sign the claim form and enter your title, if applicable.
A Notary Public must complete Items 16, 17, 18, 19 and 20.		
16.	Subscribed and Sworn	Enter the date, month, and year the Notary signed the bond claim.
17.	Signature	The Notary must sign line 17.
18.	Notary Public for the State of	Enter the state where the Notary is licensed.
19.	Residing at	Enter the city where the Notary lives.
20.	My Commission expires	Enter the date the Notary's commission expires.

THIS CLAIM MUST BE NOTARIZED BEFORE SUBMITTING TO THE DEPUTY ADMINISTRATOR, PACKERS AND STOCKYARDS PROGRAM.

C. B. GILBERT

HAULER FOR EASTERN LIVESTOCK

LOADS UNPAID/RETURNED CHECKS

1. 10/15/10
Coffeeville, Missouri and Coffeeville, Kansas to
Beemer, Nebraska
Dinkleg Feeders 72 Heifers \$ 902.87
2. 10/26/10
Lexington, Kentucky to
Sibley, Iowa
Paul Feldcamp 62 Steers \$2,356.26
3. 10/29/10
Marion, Kentucky to
Hedley, Texas
Cattleman's II 96 Heifers \$2,182.21
4. 11/3/10
Lexington, Kentucky to
Yuma, Colorado
JBS – Five Rivers 73 Heifers \$2,706.63
- Total \$8,147.97

CALL 8am

806-856-5984

MARION, KY

877-781-7261

Eastern Livestock Co., LLC

Date 10-29-11

Ship To: Cattleman's II, Hedley, TX.

Total Head 96-hfrs

TIME LOADED
TIME UNLOADED

Top Nose	Top	Top Rear
Pen No.	Pen No.	Pen No.
Bottom Nose	Bottom	Bottom Rear
Pen. No.	Pen. No.	Pen No.

Trucker C.B. Gilbert

Delivered To:

Received By:

Ray Norman

Eastern Livestock Co., LLC CORRIE VILLASDate 10-15-10Ship To: DINKLEFEEDER BEEMER 18E Total Head 72 HEADSTIME LOADED
TIME UNLOADED

Top Nose	Top		Top Rear
Pen No.	Pen No. <u>14</u>	<u>15</u>	Pen No.
Bottom Nose	Bottom		Bottom Rear
Pen. No. <u>7</u>	Pen. No. <u>15</u>	<u>14</u>	Pen No. <u>7</u>

Trucker 3 C CATTLE CO CB2-115

Delivered To: _____

Received By: [Signature]

Eastern Livestock Co., LLC

Date

Ship To:

Total Head

Top Nose

Top

Top Rear

Pen No.

Pen No.

Pen No.

Bottom Nose

Bottom

Bottom Rear

Pen No.

Pen No.

Pen No.

Trucker

Delivered To:

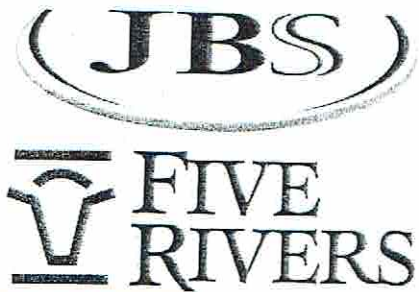
Received By:

TIME LOADED

TIME UNLOADED

712-461-1079

9-523/524



YUMA FEEDLOT
 JBS FIVE RIVERS CATTLE FEEDING LLC
 38002 COUNTY RD N
 YUMA CO 80759
 FED I.D. # 26-0111691
 PHONE 970-848-5861

TICKET: **720862**

Driver Copy

Date	11/3/2010	Ticket	720862
Customer	J & F Cattle	Contract	H
Address	Loveland, CO	Lading	LEXINGTON KY
Trucker	2 3G	Sample	31597
Commodity	Heifers	Weighed By	SL73

Scale			Origin	Deductions
79280	Gross	11/3/2010	0	
		5:43:54 PM		
33620	Tare	11/3/2010	0	
		6:05:19 PM		
45660	Net		0	
0	Dock			
45660	PayWt			

NOTICE OF CHARGE BACK ITEMS

DATE: 11/10/10

AMOUNT	ACTION	CHARGE	PAYOR NAME/REASON FOR RETURN
902.87	CHRGD BACK	.00	Refer To Maker/Lee Eastern Liv
4,538.47	CHRGD BACK	.00	Refer To Maker/Lee Eastern Liv

ACCOUNT NUMBER:	1062158
CHARGE BACKS:	5,441.34
CHARGES:	.00

3-G CATTLE CO
% C B GILBERT
4374 BLOOMFIELD ROAD
TAYLORSVILLE KY 40071-9004

The Peoples Bank
23 West Main St.
P O Box 369
Taylorsville KY 40071-0000



IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT
Substitute checks and Your Rights

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check." You can use it the same way you would use the original check. You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substituted checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to **\$2500.00** of your refund (plus interest if your account earns interest) within **10** business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than **45** calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at **The Peoples Bank, P.O. Box 369, Taylorsville, KY 40071-0369** or call **(502) 477-2244**. You must contact us within **40** calendar days of the date we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include-

- ❖ A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- ❖ An estimate of the amount of your loss;
- ❖ An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- ❖ A copy of the substitute check and the following information to help us identify the substitute check: **the check number, the name of the person to whom you wrote the check, and the amount of the check.**

083903690
11/10/2010
395806032001514

REFER TO MAKER

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

Return Reason-S
REFER TO MAKER

395806032001514
[083903690] 11/10/2010

		No 123214 <small>73-27 421</small>							
EASTERN LIVESTOCK CO., LLC PAY TO THE ORDER OF		135 West Market New Albany, IN 47150 812-949-9035							
C.B. GILBERT 3 G CATTLE CO. 4374 BLOOMFIELD ROAD TAYLORSVILLE, KY 40071		<table border="1"> <thead> <tr> <th>DATE</th> <th>CHECK No.</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>10/10/25</td> <td>123214 *</td> <td>*****902.87</td> </tr> </tbody> </table>	DATE	CHECK No.	AMOUNT	10/10/25	123214 *	*****902.87	
DATE	CHECK No.	AMOUNT							
10/10/25	123214 *	*****902.87							
		SIGNATURE							
⑈ 1 2 3 2 1 4 ⑈ ⑆ 0 4 2 1 0 0 2 7 2 ⑆ 7 4 8 0 4 9 3 7 7 9 ⑈									

⑈ 1 2 3 2 1 4 ⑈ ⑆ 0 4 2 1 0 0 2 7 2 ⑆ 7 4 8 0 4 9 3 7 7 9 ⑈

⑈ 0 0 0 0 0 9 0 2 8 7 ⑈



IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT
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- ❖ A copy of the substitute check and the following information to help us identify the substitute check: **the check number, the name of the person to whom you wrote the check, and the amount of the check.**

083903690
11/10/2010
395806032001513

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

Return Reason-S
REFER TO MAKER

REFER TO MAKER

395806032001513
[083903690] 11/10/2010

EASTERN LIVESTOCK CO., LLC PAY TO THE ORDER OF		135 West Market New Albany, IN 47150 812-949-9035		No 125002	75-27 421
		Fifth Third Bank Northern Kentucky			
		DATE 10/11/01	CHECK No. 125002	AMOUNT *****4,538.47	
C. B. GILBERT 3 G CATTLE CO. 1374 BLOOMFIELD ROAD TAYLORSVILLE, KY 40071					
MICR LINE: @ 125002 @ 042100272: 7480493779 @					

⑈ 1 25002 ⑈ ⑆ 042100272 ⑆ 7480493779 ⑈

⑈ 000045384 ? ⑈

12:02 PM

07/28/14

Accrual Basis

CB and Nannie Gilbert Transactions by Account All Transactions

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
Loan From Employer								
Deposit	1/30/2008		Eastern	Deposit			3,500.00	3,500.00
Deposit	12/4/2009		Eastern	Deposit			15,500.00	19,000.00
General Journal	12/31/2010	54					-19,000.00	0.00
Total Loan From Employer							0.00	0.00
TOTAL							0.00	0.00